IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4348 OF 2006

Punjab National Bank ..Petitioner.
Vs.
Gurmukh K. Babani & anr. ..Respondents.

Mr. M.P.S. Rao with Mr. Ashok Verma with Ms.Merlyn Monteiro for the Petitioner.
Mr. R.D. Dave with Mr. Manoj Bhatra i/b M/s. N.N. Vaishnawa & Co. for the Respondents.

WITH
WRIT PETITION NO.3810 OF 2006

Gurmukh K. Babani ..Petitioner.
Vs.
Punjab National Bank & anr. ..Respondents.

...

Mr. R.D. Dave with Mr. Manoj Bhatra i/b M/s. N.N. Vaishnawa & Co. for the Petitioner.
Mr. M.P.S. Rao with Mr. Ashok Verma with Ms.Merlyn Monteiro for the Respondents.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

10th July, 2006.

P.C. :

1. The decree for eviction has been confirmed by the Appellate Bench of the Small Causes Court. The Petitioner is not a protected tenant by virtue of the provisions of Section 3(1)(b) of the

Maharashtra Rent Control Act 2000. There was a valid notice of termination under Section 106 of the Transfer of Property Act, 1982. In this view of the matter, the decree for eviction does not warrant interference under Article 227.

2. The judgment and order of the Appellate Bench of the Small Causes Court on the question of mesne profits has been challenged both by the landlord as well as by the tenant. The Appellate Bench of the Small Causes Court increased the mesne profit from Rs.28,259/- to Rs.5,40,000/- per month. The Appellate Bench has granted mesne profit from the date of the suit. The landlord has claimed mesne profit from the date of the notice terminating the tenancy. The Punjab National Bank has challenged the order of enhancement of mesne profits. In so far as the issue of mesne profit is concerned, both the learned counsel have agreed to the following order being passed by the Court, without recording any further reasons. Consequently the following order is passed by consent, after hearing the learned counsel, and on their request:

i) The order of the Appellate Bench of the Small Causes

Court dated 18th April, 2006 to the extent to which the mesne profits came to be enhanced from Rs.28,259/- to Rs.5,40,000/- per month is quashed and set aside. Appeal 94 of 2005 and Appeal 139 of 2005 are restored to the file of the Appellate Bench of the Small Causes Court for fresh determination only in so far as the issue of mesne profits is concerned;

ii) It is common ground that the Punjab National Bank has deposited the amount as determined by the Trial Court until 31st May, 2005. The Bank shall deposit an amount calculated at the rate of Rs.1,50,000/- per month for the period from the date of the institution of the suit until 31st March, 2007 within a period of four weeks from today. Upon deposit, the landlords will be permitted to withdraw a total amount computed at the rate of Rs. 1 lac per month. Of this amount, an amount of Rs.28,259/- as determined by the Trial Court shall be permitted to be withdrawn unconditionally, while the balance out of the amount of Rs. 1 lac shall be permitted to be withdrawn subject to the furnishing of security to the satisfaction of the Registrar of the Small Causes Court. The Appellate Bench of the Small Causes Court shall determine the mesne profits after hearing all the parties;

iii) The Bank shall have time to vacate the premises until 31st March, 2007 subject to the filing of the usual undertaking in this Court within a period of four weeks from today;

iv) The parties shall appear before the Small Causes Court on 24th July, 2006 at 11.00 a.m. The Appellate Bench shall endeavour an expeditious disposal preferably by 31st December, 2006 subject to the exigencies of its own work.

All the rights and contentions of the parties are kept open.

The Petition is disposed of in these terms since no other point is pressed.